

Honorable Judge Benjamin H. Settle

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

CLYDE RAY SPENCER, MATTHEW RAY  
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING  
ATTORNEY FOR CLARK COUNTY  
JAMES M. PETERS, DETECTIVE  
SHARON KRAUSE, SERGEANT  
MICHAEL DAVIDSON, CLARK COUNTY  
PROSECUTOR'S OFFICE, CLARK  
COUNTY SHERIFF'S OFFICE, THE  
COUNTY OF CLARK, SHIRLEY  
SPENCER, and JOHN DOES ONE  
THROUGH TEN,

Defendants.

NO. C11-5424-BHS

STIPULATION AND  
[PROPOSED] ORDER  
CONTINUING TRIAL AND  
PRETRIAL DATES

NOTE ON MOTION CALENDAR:  
FEBRUARY 19, 2013

**I. STIPULATION**

The Parties, through their counsel, stipulate as follows and respectfully request the Court enter the proposed Order Continuing Trial and Pretrial Dates. Counsel notified Courtroom Deputy Gretchen Craft of the Parties' stipulation and request for an order continuing the trial and pretrial dates by telephone on February 15, 2013, and were asked to

1 submit this Stipulation and Proposed Order for the Court's consideration.

2 Trial is currently scheduled to commence on April 16, 2013. Dkt. 49. On February 13,  
3 2013, this Court entered an Order Denying Defendants' Motion to Strike Plaintiff's Second  
4 Supplemental Disclosure and to Bar Testimony, in which the Court conditioned plaintiff's use  
5 of a newly disclosed witness, Menona Landrum, upon the following, in part: "The Court will  
6 allow Defendants to conduct supplemental discovery regarding the allegations surrounding the  
7 quitclaim deed and depose Ms. Landrum. . . . Additionally, upon a showing that Defendants  
8 are unable to fully respond to Spencer's newly disclosed evidence before trial, the Court will  
9 consider a motion to continue the trial date." Dkt. 149, p. 5.

10 All three Defendants have summary judgment motions pending. Dkt. 133, Dkt. 135  
11 and Dkt. 139. Plaintiff's responsive pleadings to all three motions were filed on February 14,  
12 2013, and include citation to and argument regarding the newly disclosed witness and quit  
13 claim deed. Dkt. 150, Dkt. 151 and Dkt. 152. Defendants' reply pleadings are due next  
14 Friday, February 22, 2012. Dkt. 141. Defendants intend to conduct supplemental discovery  
15 regarding the quit claim deed and knowledge and testimony of Ms. Landrum, including at least  
16 retaining a handwriting expert for consultation and possible testimony, requesting production  
17 of other documents notarized by Ms. Landrum and possibly plaintiff, and deposing Ms.  
18 Landrum. Defendants will be unable to conduct this supplemental discovery in time to fully  
19 respond to the newly disclosed evidence in the summary judgment reply pleadings due next  
20 Friday.

21 Counsel for all parties conducted a telephone conference call the morning of February  
22 15, 2013, during which counsel for Defendants set forth their position regarding the need for  
23 more time to conduct the supplemental discovery, and counsel for plaintiff stipulates that  
24 additional time is needed. During the telephone conference call, all counsel also addressed the  
25 subject of conducting the Local Rule CR 39.1 settlement conference required under the current  
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1 scheduling Order to be completed by today (Dkt. 49), and the Parties agree that such  
 2 discussions are premature given the status of additional discovery and pending motions. The  
 3 Parties agree that the trial date should be continued, with new corresponding pretrial dates  
 4 which allow all Parties to fully and fairly comply with all obligations and deadlines.

5 Given the following conflicts for trial counsel for the Parties, the Parties respectfully  
 6 request that the trial date in this matter be continued to January, 2014.

7 Counsel for Plaintiff: unavailable December 9-18, 2013;

8 Counsel for Defendant Peters: unavailable prior to October 27, 2013, also unavailable  
 9 November 12-18, 2013;

10 Counsel for Defendant Krause: unavailable May 1-23, 2014;

11 Counsel for Defendant Davidson: unavailable September 9-20, 2013; November 4-15,  
 12 2013; February 3-28, 2014.

13 Regarding the Defendants' pending summary judgment motions, the Parties agree that  
 14 the newly disclosed evidence has no bearing on the claims against Defendant Peters, so  
 15 Defendant Peters' reply brief will remain due on February 22, 2013. However, Defendants  
 16 Davidson's and Krause's reply briefs will be due five court days (excluding weekends and  
 17 federal holidays) after Defendants Davidson and Krause receive the transcript of Ms. Landrum's  
 18 deposition, and the summary judgment motions will be noted for the next Friday that is at least  
 19 five court days after Defendants Davidson and Krause receive that transcript.

20 So stipulated and agreed:

21 /s/ Kathleen T. Zellner  
 22 Kathleen T. Zellner & Associates, P.C.  
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Attorneys for Defendant Davidson

## II. ORDER

Based on the foregoing stipulation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the trial date in this matter is continued to \_\_\_\_\_, 2014, and that a new Order will be entered setting pretrial dates accordingly.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Davidson's and Krause's pending summary judgment motions (Dkt. 133 and Dkt. 139) are hereby continued, and should be re-noted for the first Friday that falls five court days after Defendants Davidson and Krause receive the transcript of Ms. Landrum's deposition. Defendants Davidson's and Krause's reply briefs in support of their pending summary judgment motions shall be due five court days after Defendants Davidson and Krause receive the

1 transcript of Ms. Landrum's deposition. Defendant Peters' reply brief remains due on February  
2 22, 2013, as currently noted based on the Parties' stipulation the newly discovered evidence has  
3 no bearing on Defendant Peters' summary judgment motion.

4 DONE IN OPEN COURT this \_\_\_\_\_ day of February, 2013.

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7 U. S. DISTRICT JUDGE BENJAMIN H. SETTLE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 16, 2013, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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